

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**SECTION XV COMMENTS OF THE NEBRASKA RURAL INDEPENDENT  
COMPANIES**

Dated: April 1, 2011

The Nebraska Rural Independent Companies

Paul M. Schudel (NE Bar No. 13723)  
James A. Overcash (NE Bar No. 18627)  
WOODS & AITKEN LLP  
301 South 13<sup>th</sup> Street, Suite 500  
Lincoln, NE 68508  
(402) 437-8500  
Their Attorneys

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## SUMMARY OF COMMENTS

The Nebraska Rural Independent Companies (the “Nebraska Companies”) appreciate the opportunity to submit these Section XV Comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking.<sup>1</sup> The Nebraska Companies recognize the significance of the Federal Communications Commission (the “Commission”) proposed reforms to modernize and refocus the Universal Service Fund (“USF”) and intercarrier compensation (“ICC”) systems to support the deployment of broadband to all Americans.

The Nebraska Companies principally address the scope and treatment of Voice over Internet Protocol (“VoIP”) traffic for ICC purposes and the proposed amendments to the Commission’s call signaling rules in these Comments.

In the *Notice*, the Commission acknowledges that interconnected VoIP service is functionally indistinguishable from traditional voice telephone service, and therefore, inquires into the appropriate ICC framework for VoIP service. The Nebraska Companies do not believe that the Commission should adopt an overly narrow focus solely on “interconnected” VoIP traffic as other VoIP traffic that terminates on the public switched telephone network (“PSTN”) will be excluded from ICC rules and payment obligations. The Nebraska Companies maintain that the Commission’s policy statement in the *IP-Enabled Services NPRM* requires the

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<sup>1</sup> See, *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“*USF/ICC Transformation NPRM*” or “*Notice*”).

Commission to determine that VoIP-PSTN traffic should be subject to the same ICC obligations as other voice telephone traffic.

The Nebraska Companies urge the Commission not to adopt a VoIP-specific ICC rate unique to VoIP-PSTN traffic or move VoIP traffic into a bill-and-keep methodology. If different rates are applied for providing VoIP-PSTN service, when it is viewed as functionally equivalent to traditional voice service by consumers, the Commission would be effectively promoting regulatory arbitrage. To avoid new arbitrage opportunities, the Nebraska Companies believe that the Commission can, and should, determine that VoIP-PSTN voice traffic is subject to the same ICC payment obligations as traditional telephone voice traffic regardless of the regulatory classification or the technology used in the delivery of the traffic.

Most importantly, the Nebraska Companies assert that the Commission should refrain from significant modifications to the ICC policies until the Connect America Fund is established and proven to provide a sustainable cost recovery mechanism for carriers operating in rural areas.

The Nebraska Companies are in support of the Commission and its effort to move forward with clarifying existing rules governing signaling information. Further, the Nebraska Companies urge the Commission to take action to mandate additional rules for signaling and billing in order to significantly reduce phantom traffic issues. The Nebraska Companies' proposal of additional requirements will assist with identifying the financially responsible party as well as ensure proper jurisdiction is assigned to the call for billing purposes.

In addition to adoption of the rule applying to VoIP carriers, all jurisdictions, all traffic destined for the PSTN, and mandating the calling party number ("CPN"), charge number ("CN"), and automated number identification ("ANI") be passed, the Commission should

mandate the applicable party described in Section V *infra* to populate the Signaling System 7 (“SS7”) Carrier Identification Parameter (“CIP”) and/or Transit Network Selection (“TNS”) field(s) with the accurate Carrier Identification Code (“CIC”) of the Interexchange Carrier (“IXC”) carrying the call and require accurate population of the Jurisdictional Identification Parameter (“JIP”) field. For billing purposes, the Commission should also mandate that Exchange Message Interface (“EMI”) files include the populated JIP in the originating Local Routing Number (“LRN”) field. The EMI files should also include the IXC CIC and the non-IXC Operating Company Number (“OCN”). The party identified by the CIC or OCN that appears in the final record should be the financially responsible party for that call. However, if incomplete information is delivered, then the last IXC to transport the call should be the financially responsible party for the termination of the call. If the terminating IXC cannot be identified, then the originating IXC (customer picked long distance provider) should be the financially responsible party for the termination of the call.

For Commercial Mobile Radio Service (“CMRS”) originated calls the population of the JIP field should additionally include the 2-digit state code and the 2-digit MTA code of the originating tower, as well as the originated switch information for that call. The Commission should clarify that the “telephone numbers rule” (based on CPN) will apply by default in the transition period if a non-existent actual geographic location is populated or if an agreement to jurisdictionalize the traffic for billing purposes is not in place.

In order to identify and properly bill for traffic on the terminating provider’s networks, these recommended fields (discussed in detail in Section V *infra*) in addition to the Commission’s proposed rules, need to be accurately populated and passed between carriers in order to greatly reduce phantom traffic and billing disputes on a going-forward basis. The

Nebraska Companies respectfully requests the Commission to consider the proposed rules for signaling and billing as described herein.

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**SECTION XV COMMENTS OF THE NEBRASKA RURAL INDEPENDENT  
COMPANIES**

**I. Introduction.**

The Nebraska Rural Independent Companies (“Nebraska Companies”)<sup>2</sup> hereby submit these Section XV Comments in the above-captioned proceeding. On February 9, 2011, the Federal Communications Commission (the “Commission”) released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking<sup>3</sup> seeking comment on proposed

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<sup>2</sup> The Companies submitting these Section XV Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

<sup>3</sup> See, *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*,



changes to the Commission's universal service fund ("USF") and intercarrier compensation ("ICC") system, and addressing phantom traffic. In this filing, the Nebraska Companies will address several of the questions presented in Section XV ("Reducing Inefficiencies and Waste By Curbing Arbitrage Opportunities") of the *Notice*.

**II. To Avoid Creating New Arbitrage Opportunities, the Commission Must Treat All Traffic Terminating on the Public Switched Telephone Network ("PSTN") Equally Regardless of the Regulatory Classification or the Technology Used.**

The Commission is seeking comment on the appropriate ICC framework for Voice over Internet Protocol ("VoIP") traffic in Section XV of the *Notice*. The Commission has recognized that VoIP service appears to be viewed by consumers as a substitute for traditional voice telephone services,<sup>4</sup> as incumbent local exchange carrier ("ILEC") access facilities are used in the same manner whether terminating VoIP traffic or terminating traditional circuit-switched voice traffic. If different rates are applied for providing VoIP-PSTN<sup>5</sup> service, when it is viewed as essentially the same service as traditional voice and it cannot be distinguished from any other type of call, the Commission would be creating a new opportunity for regulatory arbitrage. This new arbitrage opportunity would make the current problems presented by phantom traffic and access stimulation pale in comparison. Some carriers would continue to play by today's rules while other carriers would have an incentive to originate all voice traffic as VoIP or simply to declare such traffic to be originated as VoIP. As AT&T observed in a filing with the Commission, "where an opportunity for arbitrage exists, the industry tends not to tarry long

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WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) ("*USF/ICC Transformation NPRM*" or "*Notice*").

<sup>4</sup> *Notice*, para. 612.

<sup>5</sup> As discussed in Section III of these comments, the Nebraska Companies believe that the scope of Voice over Internet Protocol traffic for intercarrier compensation purposes should be expanded to include all voice traffic that originates or terminates on the PSTN. Therefore, throughout these comments, the Nebraska Companies use the term "VoIP-PSTN" to describe and define any voice traffic that originates on an IP platform and terminates on the PSTN, or originates on the PSTN and terminates on an IP platform.

before it finds a means to exploit it.”<sup>6</sup>

The Commission can avoid this outcome by treating all traffic that utilizes the PSTN equally regardless of the regulatory classification or technology used. This approach will allow the Commission to establish a transition plan for ICC reform that is implemented based upon a gradual phase-in, minimizes market disruptions, and allows for the development of the proper recovery mechanisms as USF is reformed.

**III. The Commission Should Not Distinguish Between “Fixed” and “Nomadic” VoIP-PSTN Service or Limit the Scope of Intercarrier Compensation Obligations Merely to “Interconnected” VoIP Traffic.**

The Commission’s acknowledgement in the *Notice* that interconnected VoIP service is functionally indistinguishable from traditional voice telephone service, and thus, commonly regarded as an acceptable substitute for traditional voice services<sup>7</sup>, prompts the Commission to inquire into the appropriate ICC framework for VoIP service and whether any ICC obligations should extend to include other forms of VoIP traffic.

For purposes of ICC obligations, the Nebraska Companies believe that the Commission should not distinguish between “fixed” and “nomadic” VoIP-PSTN service, nor limit the scope of ICC obligations merely to “interconnected” VoIP traffic. An overly narrow focus on interconnected VoIP traffic will exclude from ICC rules and payment obligations other VoIP traffic that traverses over and terminates on the PSTN, but that does not meet the technical definition of interconnected VoIP.<sup>8</sup> To be considered interconnected VoIP service, an end user

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<sup>6</sup> See, AT&T July, 17, 2008 Ex Parte Letter, Letter from James C. Smith, SBC, to Chairman Martin, FCC, WC Docket No. 03-266.

<sup>7</sup> *Notice*, para. 612.

<sup>8</sup> Interconnected VoIP service “(1) [e]nables real-time, two-way voice communications; (2) [r]equires a broadband connection from the user’s location; (3) [r]equires IP-compatible customer premises equipment (CPE); and (4) [p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.” 47 C.F.R. § 9.3.

must have the ability to place calls to and receive calls from the PSTN. However, other types of VoIP services (e.g., SkypeOut) utilize North American Numbering Plan (“NANP”) numbering resources and allow users to place calls to the PSTN, but not receive calls from the PSTN. Because users of these alternative services are able to only generate calls to and not receive calls from the PSTN, these services would not meet the precise definition of interconnected VoIP service. Consequently, if the Commission focuses solely on interconnected VoIP for ICC purposes, an entire class of VoIP-PSTN voice traffic will be exempted from ICC payment obligations. The Nebraska Companies urge the Commission to apply the policy first articulated in the *IP-Enabled Services NPRM* to VoIP-PSTN traffic by declaring in this proceeding that regardless of the manner or technology in which a voice call is originated, any traffic that terminates on the PSTN must be subjected to the same ICC charges.<sup>9</sup>

Furthermore, the Commission’s proposed modifications to the Commission’s call signaling rules<sup>10</sup> should facilitate the application of ICC payment obligations to all VoIP-PSTN traffic, whether classified as “fixed,” “nomadic,” or another type of VoIP service. The amendments to the call signaling rules must ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the provider that is financially obligated for terminating compensation.<sup>11</sup> As amended, entities originating interstate or intrastate traffic either on or destined for the PSTN will be required to provide the telephone

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<sup>9</sup> The Commission stated that “[a]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.” See, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, paras. 33 and 61 (rel. Mar. 10, 2004) (“*IP-Enabled Services NPRM*”).

<sup>10</sup> 47 C.F.R. § 64.1601; see also, *Notice*, Appendix B.

<sup>11</sup> The Nebraska Companies recommend that the Commission make a policy pronouncement as to which carrier is financially obligated to compensate the terminating carrier for the traffic terminated on the terminating carrier’s network. In the absence of sufficient billing information for the financially responsible carrier, the Commission should determine a default position that allows the terminating carrier to bill the interconnected party for terminated traffic.

numbers received from, assigned to, or otherwise associated with the calling party.<sup>12</sup> However, to capture all of the VoIP-PSTN voice traffic that may not have a telephone number associated with it, the Commission must also require originating carriers to provide alternative information, such as the originating carrier and/or IP addresses associated with the calling party, to the terminating carrier to ensure proper billing. While VoIP service providers have offered a variety of reasons why they are not responsible for access charges,<sup>13</sup> their primary rationale has been what they claim is the uncertainty surrounding the geographic end points of a VoIP call, and the resultant inability to properly classify the call as an interstate, intrastate or local (and thus, the inability to assess the appropriate ICC charge). However, this can be remedied by the adoption and enforcement of the proposed call signaling rules, as discussed in more detail in Section V *infra*. These rules will require carriers and entities delivering traffic to the PSTN to provide sufficient call detail information that will assist terminating carriers in determining the appropriate geographic end points (or a suitable proxy) of the call for access charge purposes. The Commission should immediately adopt and enforce (with penalties for violators) call signaling rules which will prevent providers from engaging in phantom traffic arbitrage.

Taken in totality, the Nebraska Companies assert that the Commission's recognition of VoIP service as a substitute for traditional voice telephone service, together with the Commission's previous policy pronouncement in the *IP-Enabled Services NPRM*, and the amended call signaling rules as proposed herein by the Nebraska Companies to assist in determination of the proper jurisdiction of VoIP-PSTN traffic offer the Commission a compelling justification for applying the current ICC regime to all voice traffic delivered to the PSTN.

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<sup>12</sup> Notice, Appendix B.

**IV. During the Transition Phase the Commission Should Determine that the Appropriate Intercarrier Compensation Regime For VoIP-PSTN Traffic Is the Same Intercarrier Compensation Regime That Currently Applies to All Voice Traffic.**

The Commission seeks comment on whether it could determine that interconnected VoIP traffic is subject to ICC charges under a regime unique to interconnected VoIP, such as interstate access rates, reciprocal compensation rates, or some other defined rate such as \$0.0007. The Commission also seeks comment on whether a VoIP-specific rate would create an incentive to originate all voice traffic as VoIP, or simply declare it to be originated as VoIP so that little traffic ultimately would be billed at the higher rates? The answer to this latter question is simply, yes.

**A. A Rate That Is Unique to VoIP-PSTN Traffic Will Incent Arbitrage and Will Disrupt the Phased Implementation of Comprehensive Intercarrier Compensation Reform.**

In proposing to reform ICC, the Commission seeks ways to reduce arbitrage opportunities and minimize disruption to service providers, including minimization of litigation and revenue uncertainty.<sup>14</sup> Adopting a rate that is unique to VoIP-PSTN traffic would create or perpetuate arbitrage opportunities as service providers can reasonably be expected to immediately begin to declare their traffic to be originated as VoIP.

The arbitrage caused by the rate disparity will disrupt the Commission's goal of establishing a transition plan that is both gradual and phased-in in its implementation and one that minimizes market disruptions.<sup>15</sup> Carriers will experience a significant and immediate reduction in ICC revenues prior to the Commission's establishment of a glide path or creation of

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<sup>13</sup> *Id.*, fn. 920.

<sup>14</sup> *Id.*, para. 535.

<sup>15</sup> As part of its comprehensive intercarrier compensation reform, the Commission proposes to establish a glide path for all traffic which would gradually reduce all intercarrier compensation rates and would involve including the necessary cost or revenue recovery that might be provided through the CAF. *Id.*, para. 550.

a mechanism for cost and revenue recovery through CAF. The Commission's plan to adopt rules that provide a gradual and phased-in implementation of ICC reform will be preempted by the market disruptions caused by arbitrage based upon rate disparities.

**B. The Arbitrage Caused By a Rate Unique to VoIP-PSTN Traffic Will Be Unduly Economically Burdensome to Rural Carriers Such as the Nebraska Companies.**

The arbitrage caused by adopting a rate unique to VoIP-PSTN will result in an immediate and dramatic decline in Local Exchange Carrier ("LEC") ICC revenues. As the Commission observed, ICC revenues may represent 10-30 percent of some carriers' regulated revenues.<sup>16</sup> In 2009, the Nebraska Companies collectively recorded \$20,007,742 in interstate and intrastate access revenues. Implementing an ICC rate of \$0.0007 per minute would have reduced intrastate and interstate access revenue in 2009 by 99% to \$224,094. A reduction in revenue of this magnitude would be economically burdensome and would most likely result in discontinuation or severe reductions of capital investments by the Nebraska Companies in order to maintain positive cash flows. Instead of devoting resources to capital investment and deploying broadband in rural areas, it is reasonable to anticipate that the Nebraska Companies' and other rural LECs' resources will be committed to arbitrage-related disputes and litigation, a result the Commission has sought to avoid.<sup>17</sup>

As the Commission has observed, declining access revenues make it more difficult for carriers to make investment decisions with any level of certainty.<sup>18</sup> The Commission concluded that bringing greater certainty to the industry regarding revenue sources ultimately benefits

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<sup>16</sup> *Id.*, para. 567.

<sup>17</sup> *Id.*, para. 507.

<sup>18</sup> *Id.*, para. 504.



consumers.<sup>19</sup> Such goals cannot be reconciled with a virtual end to the Nebraska Companies' access revenues, as demonstrated above. The virtual elimination of revenues resulting from the adoption of a rate unique to VoIP-PSTN will create greater uncertainty for the Nebraska Companies, and as a result, will not be in the interests of their customers.

If the Commission moves all VoIP-PSTN traffic within section 251(b)(5) and adopts a rate unique to VoIP-PSTN traffic, given the undue economic burden imposed on the Nebraska Companies and all rural LECs, there will likely be no alternative other than to petition for a suspension or modification under section 251(f)(2) of the Act. The state commission could suspend enforcement of the requirement of applying section 251(b)(5) to VoIP-PSTN traffic. The Nebraska Companies therefore urge the Commission not to adopt a rate that is unique to VoIP-PSTN traffic by moving all VoIP-PSTN traffic within section 251(b)(5), in order to avoid a rash of section 251(f)(2) cases in state utility commissions across the nation.

**C. There Is No Basis to Establish a \$0.0007 Per Minute Rate for VoIP-PSTN Traffic.**

In addition to the undue economic burden caused by the application of the \$0.0007 rate, the \$0.0007 rate has only been adopted for ISP-bound traffic and therefore there is no historical basis to apply the rate to VoIP-PSTN traffic. The \$0.0007 rate was a negotiated rate for reciprocal compensation between Southwest Bell Communications and Level 3.<sup>20</sup> Effective with its Order on Remand and Report and Order on Inter-carrier Compensation for ISP-bound traffic, the Commission reduced ISP-bound traffic over a period of three years, capping the final rate at \$0.0007 per minute. The Commission determined that in order to limit disputes and avoid costly efforts in identifying ISP-bound traffic, it would adopt a rebuttable presumption that traffic

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<sup>19</sup> *Id.*

<sup>20</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order*, Released April 27, 2001, fn. 158.

delivered to a carrier pursuant to a particular contract that exceeds a 3:1 ratio of terminating traffic to originating traffic, would be considered ISP-bound traffic subject to the compensation mechanism set forth in the Commission's decision.<sup>21</sup> The Commission allowed carriers to rebut the presumption by demonstrating to the applicable state commission that the traffic above the 3:1 ratio was local traffic delivered to non-ISP customers whereby the state commission would order payment of the state-approved or state-arbitrated rates for that traffic.<sup>22</sup> The Commission further ordered that the rate caps would only apply if an incumbent LEC offered to exchange all traffic subject to section 251(b)(5) at the same rate.<sup>23</sup>

There are major differences between what the Commission ordered for ISP-bound traffic and the proposal under consideration for VoIP-PSTN traffic.

1. In making its finding in the ISP-bound Order, the Commission stated that pursuant to the analysis used in adopting its finding, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a Commercial Mobile Radio Service ("CMRS") provider that is not interstate or intrastate access traffic delivered to an IXC or information service provider.<sup>24</sup> Yet, VoIP-PSTN traffic terminated to one of the Nebraska Companies would be precisely the traffic the Commission excluded in footnote 177 of the ISP-bound Order (*i.e.*, interstate or intrastate access traffic delivered to an IXC or information service provider) in those instances in which the originating NPA-NXX is outside of the local area of the terminating Nebraska Company.

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<sup>21</sup> *Id.* para. 79.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* para. 89.

<sup>24</sup> *Id.* fn. 177.



2. The traffic flows contemplated in the *Notice* (terminating to ILECs) are opposite from the traffic flow in the ISP-Bound Order (originating from ILEC). In the proposed option under consideration, traffic terminating to an LEC would flow from a VoIP provider to an IXC/service provider to the ILEC. In the ISP-bound Order, the traffic flow was from the ILEC to a CLEC to an ISP.

3. Perhaps the most obvious point is that the traffic for which the proposed rate would apply is voice traffic as opposed to dial-up Internet traffic.

4. Even if VoIP-PSTN traffic was determined to be 251(b)(5) traffic, the ISP-bound Order deferred to the ILEC as to whether it would elect to apply the ISP-bound rate to all 251(b)(5) traffic.

Given these major differences between what the Commission ordered for ISP-bound traffic and the proposal under consideration of VoIP-PSTN traffic, the Nebraska Companies urge the Commission not to adopt an ICC rate unique to VoIP-PSTN traffic.

**D. The Commission Should Affirm That Access Charges Apply to All Traffic That Is Terminated on the Access Facilities of Local Exchange Carriers.**

The Commission has observed that interconnected VoIP service increasingly appears to be viewed by consumers as a substitute for traditional voice telephone service.<sup>25</sup> Given this Commission finding, it should not adopt a rate or compensation regime that is unique to VoIP-PSTN traffic. The Commission has previously stated: “As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether traffic originates on the PSTN, on an IP network, or on a

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<sup>25</sup> *Notice*, para. 612.

cable network. We maintain that the costs of the PSTN should be borne equitably among those that use it in similar ways.”<sup>26</sup>

In lieu of this position, the Commission should not adopt a rate unique to VoIP-PSTN traffic, but instead should affirm that access charges apply to all traffic that is terminated on access facilities of LECs, regardless of the traffic’s regulatory classification or the technology used to originate the call. This finding would be consistent with the Commission’s goal in the *Notice* to establish technology-neutral definitions, proposals and rules.<sup>27</sup> In addition, such affirmation would provide rural LECs a revenue source to make it possible to continue to invest in broadband facilities during the Commission’s planned transition period to reform ICC and its development of the proper access recovery mechanisms through the CAF.

**E. The Commission Should Not Adopt Bill-and-Keep For VoIP-PSTN Traffic; Instead, the Commission Should Affirm that Access Charges Apply to All Voice Traffic Terminated on the PSTN.**

Under another alternative, the Commission seeks comment on whether it could adopt bill-and-keep for interconnected VoIP traffic. It notes that section 251(b)(5) requires LECs “to establish reciprocal compensation arrangements for the transport and termination of telecommunications,”<sup>28</sup> and that interconnected VoIP traffic is “telecommunications” traffic, regardless of whether interconnected VoIP service were to be classified as a telecommunications service or information service.

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<sup>26</sup> *IP-Enabled Services NPRM*, para. 33 and 61.

<sup>27</sup> *Notice*, paras. 13, 14, 15, 32, 37, 42, 56, 96, 124, 136, and 198

<sup>28</sup> 47 U.S.C. § 251(b)(5). Although section 251(g) preserved the pre-1996 Act regulatory regime that applies to access traffic, including rules governing “receipt of compensation,” 47 U.S.C. 251(g), section 251(g) “is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act.” *WorldCom*, 288 F.3d 429, 430.

Many of the same arguments made against the use of applying a unique rate/compensation regime to VoIP-PSTN traffic can similarly be made against adopting bill-and-keep for VoIP-PSTN traffic. These arguments include the following:

1. Adopting a bill-and-keep regime for VoIP-PSTN traffic will create or perpetuate arbitrage opportunities as service providers would immediately begin to declare their voice traffic to be originated as VoIP.

2. Arbitrage will present an obstacle to the Commission's goal of establishing a transition plan that is both gradual and phased-in its implementation. Instead of implementing a plan that minimizes market disruptions, adopting a bill-and-keep regime for VoIP-PSTN traffic will set the stage for arbitrage opportunities increasing the likelihood for market disruptions.

3. The immediate financial impact from the loss of access revenue caused by arbitrage will be economically burdensome for the Nebraska Companies. Similar to the impact described above regarding the option of adopting a rate unique to VoIP-PSTN, the Nebraska Companies could see an immediate decline of \$20 million in lost access revenue if the Commission were to adopt a bill-and-keep regime for VoIP-PSTN traffic.

4. Given the undue economic burden that would be imposed by adopting a bill-and-keep regime for VoIP-PSTN and the resulting arbitrage that is likely to follow, the Nebraska Companies may be forced to petition the Nebraska Public Service Commission for a suspension or modification under section 251(f)(2) of the Act.

5. Pursuant to 47 C.F.R. § 51.713(b), a state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the

amount of telecommunications flowing in the opposite direction, and is expected to remain so. Since the telecommunications traffic under consideration is exchange access traffic, there is no basis for a state commission to conclude that the traffic is roughly balanced.<sup>29</sup> As such, there would be no basis for a state commission to adopt bill-and-keep for the exchange of VoIP exchange access traffic.

6. If the Commission specifies that VoIP-PSTN traffic is within the section 251(b)(5) reciprocal compensation framework, the state commission must determine if the terms and conditions for reciprocal compensation are just and reasonable and the costs are determined based on the reasonable approximation of the additional costs of terminating such calls.<sup>30</sup>

7. The Commission has recognized that interconnected VoIP is a substitute for traditional voice service.<sup>31</sup> Adopting a bill-and-keep regime for VoIP-PSTN traffic would contradict the Commission's previous policy statement that the costs of the PSTN should be borne equitably among those that use it in a similar manner.<sup>32</sup>

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<sup>29</sup> See, Iowa Utilities Board, Docket No. FCU-2010-0001, *Sprint Communications Company L.P. vs. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Issued Feb. 4, 2011, pp.43-44 ("*Iowa Telecom*"). The IUB ordered bill-and-keep as it related only to the exchange of local traffic between wholesale carriers and ILECs, not to the exchange of long distance traffic. See also, *IP-Enabled Services NPRM*, Comments of AT&T, Nov. 26, 2008, p. 29, "access charges properly apply today to interexchange traffic that is delivered to the PSTN, regardless of its classification." And from p.30, "interexchange VoIP calls terminated on the PSTN are access calls and should be treated as such during the transition to a unified termination rate."

<sup>30</sup> 47 U.S.C. § 251(d)(2)(A)(ii). See also, *Palmerton Telephone Company v. Global NAPS South, Global NAPS Pennsylvania Inc., Global NAPs, Inc., and other affiliates*, Pennsylvania Public Utility Commission, "Opinion and Order," Docket C-2009-2093336, issued Feb. 11, 2010, p. 25. The PPUC noted that there are costs involved in the termination of any type of traffic that the ILEC receives and such costs do not disappear when the traffic includes VoIP calls, and determined that the ILEC is entitled to compensation for the traffic.

<sup>31</sup> Notice, para 612

<sup>32</sup> *IP-Enabled Services NPRM*, para. 33 and 61.

8. Adopting a bill-and-keep regime for VoIP-PSTN traffic would not be consistent with the Commission's objective of technology neutral policies and rules emphasized throughout the *Notice*.<sup>33</sup>

The Commission should not adopt bill-and-keep for interconnected VoIP-PSTN traffic. Rather, the Commission should affirm that access charges apply to all traffic that is terminated on the access facilities of rural LECs generally and the Nebraska Companies specifically, regardless of the traffic's regulatory classification or the technology used to originate the call. This affirmation would allow rural LECs and the Nebraska Companies to continue to invest in broadband facilities during the Commission's planned transition period to reform ICC and its development of the proper access recovery mechanisms in the CAF.

**F. The Commission Should Determine That VoIP-PSTN Traffic Is Immediately Subject to Intercarrier Compensation Rules and Refrain From Modifications to Intercarrier Compensation Policies Until the Connect America Fund Is Fully Established and Proven to be Sustainable.**

In the *Notice*, the Commission asks what flexibility it has in adopting ICC obligations for interconnected VoIP traffic specific to some future point in the glide path for long term ICC reform.<sup>34</sup> The Nebraska Companies caution that any policy allowing the deferral of ICC obligations of VoIP-PSTN traffic to some future date will have an immediate and negative impact on the already-worsening cash flow of rural LECs, and the adverse impact thereof on investment activities of rural LECs.

The Commission recognizes some lack of clarity surrounding the ICC obligations of VoIP traffic has already led to billing disputes and litigation.<sup>35</sup> This uncertainty has already induced large carriers to unilaterally engage in "self-help" practices by withholding payments for

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<sup>33</sup> *Notice*, paras 13, 14, 15, 32, 37, 42, 56, 96, 124, 136, and 198.

<sup>34</sup> *Id.*, para. 617.

<sup>35</sup> *Id.*, para. 608.

access charges associated with VoIP traffic.<sup>36</sup> In fact, even when large carriers have agreed, as part of an interconnection agreement, to compensate voice calls transmitted over the public Internet or a private IP network (VoIP) in the same manner as traditional voice traffic (e.g., reciprocal compensation, interstate access and intrastate access), in an increasing number of instances carriers are refusing to pay the corresponding access rates due to the traffic being VoIP.<sup>37</sup> However, in both the *Iowa Telecom* and the *Central Telephone* cases, the carrier withholding payment was ordered to pay the accrued unpaid access charges. To avoid the continuing need to seek individual state utility commission and state and federal court determinations regarding the ICC obligations that are applicable to VoIP traffic, the Commission should affirm that VoIP-PSTN traffic is subject to the same ICC regime as traditional voice traffic, and should also affirm that VoIP-PSTN traffic is subject to ICC obligations that are consistent with other voice traffic.

In anticipation of likely contentions that will be made by other parties, the Nebraska Companies specifically submit that making VoIP-PSTN traffic subject to ICC obligations, but only as of a designated future date,<sup>38</sup> unjustly enriches the carriers currently withholding access payments for VoIP-PSTN traffic and unfairly penalizes the carriers that have been terminating this VoIP-PSTN traffic. The Commission's policy statement in the *IP-Enabled Services NPRM*<sup>39</sup> should guide the Commission's policymaking on this matter. For ICC purposes, all

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<sup>36</sup> For example, See, *In the Matter of the Complaint of Midcontinent Communications, Knology of the Plains, Inc., and Knology of the Black Hills, LLC, Against MCI Communications Services, Inc. D/B/A Verizon Business Services for Unpaid Access Charges*, TC10-096, South Dakota Public Utilities Commission (filed Oct. 27, 2010) (pending); See also, *Iowa Telecom*.

<sup>37</sup> See, *Central Telephone Co. of Virginia, et al. v. Sprint Communications Co. of Virginia, Inc., et al.*, "(Central Telephone)" – F.Supp.2d – 2011 WL 778402 (E.D. VA. Mar. 2, 2011).

<sup>38</sup> Notice, para 617.

<sup>39</sup> "As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on

traffic utilizing the PSTN should be subject to equal compensation obligations, however, imposing those obligations on carriers at some arbitrary date in the future is illogical. If the Commission correctly decides that VoIP-PSTN traffic is subject to ICC obligations, it should determine that all VoIP-PSTN traffic is responsible presently for all accrued ICC charges. The Commission must not reward carriers for the non-payment of access charges, nor should the Commission allow the retroactive balances that carriers have improperly refused to pay be swept under the rug, forcing the terminating carriers to write those charges off as a loss.

A declaration that VoIP-PSTN traffic is not subject to ICC charges until some future date will incent carriers to improperly claim all originating traffic as VoIP in an effort to avoid paying any terminating access for that traffic until the designated date arrives. In the interim, the receipt of terminating access revenues of rural LECs will drastically decline as a result of arbitrage, which will delay further investment and maintenance in rural broadband networks. To avoid this, the Commission should refrain from significant modifications to the ICC policies until the Connect America Fund is established and proven to be a sustainable cost recovery mechanism for carriers operating in rural areas.

**G. Traditional Traffic Compensation Obligations Should Remain in Place For VoIP-PSTN Traffic While the Commission Adopts Comprehensive Intercarrier Compensation Reform.**

The Commission also asks whether it could determine that interconnected VoIP traffic is subject to the same ICC charges – intrastate access, interstate access and reciprocal compensation – as other voice telephone traffic both today, and during any ICC reform

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a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.” *IP-Enabled Services NPRM*, paras. 33 and 61.



transition, and if the Commission could achieve this outcome without classifying interconnected VoIP as a telecommunications service.<sup>40</sup>

As discussed above, the Nebraska Companies maintain that the Commission's policy statement in the *IP-Enabled Services NPRM* requires the Commission to determine that VoIP-PSTN traffic should be subject to the same ICC obligations as other voice telephone traffic. The Nebraska Companies assert that there is a compelling rationale to applying existing ICC to all VoIP-PSTN traffic; specifically, that VoIP-PSTN voice traffic is functionally indistinguishable from traditional voice traffic. Clearly, the FCC's statement that the "cost of the PSTN should be borne equitably among those that use it in similar ways"<sup>41</sup> was the agency's statement of policy during this period of regulatory uncertainty for IP-enabled services to ensure that all carriers sending traffic to the PSTN continue paying access charges for that traffic. Therefore, the Nebraska Companies contend that traditional traffic compensation obligations should remain in place for VoIP-PSTN traffic while the Commission adopts its comprehensive ICC reform. The Nebraska Companies believe that the Commission can, and should, determine that VoIP-PSTN voice traffic is subject to the same ICC payment obligations as traditional telephone voice traffic regardless of how VoIP service is classified.

In *Time Warner*,<sup>42</sup> in addition to being asked to determine the interconnection entitlement of wholesale telecommunications carriers with ILECs when also providing services to VoIP service providers, the Commission was asked to tackle the statutory classification of VoIP. In that case, the Commission declined to address the issue of the classification of VoIP services,

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<sup>40</sup> Notice, para. 618.

<sup>41</sup> *IP-Enabled Services NPRM*, paras. 33 and 61.

<sup>42</sup> See, *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, *Memorandum Opinion and Order* (rel. Mar. 1, 2007) ("*Time Warner*").



stating that “the statutory classification of a third-party provider’s VoIP service as an information service or a telecommunications service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection under Section 251(a) and (b).”<sup>43</sup> Because the regulatory status of VoIP had no bearing on the underlying issue in the *Time Warner* case, the Commission did not find it necessary to resolve that issue. The regulatory status of VoIP traffic is not the underlying issue in this matter either. For ICC purposes, the pertinent factor is whether voice traffic is being terminated to the PSTN. Therefore, the Commission must determine that all voice traffic terminating on the PSTN, whether traditional telephone service or IP-originated and/or transmitted in whole or in part over the public Internet or a private IP network, should immediately be subject to the same ICC obligations. Although the Commission indicated that it would not pre-judge what ICC obligations are appropriate, the result that the Nebraska Companies seek is fully consistent with the *Time Warner* decision which made ICC an “explicit condition” of the rights provided to wholesale telecommunications carriers pursuant to the *Time Warner* decision.<sup>44</sup>

In regard to the Commission’s inquiries on curbing arbitrage opportunities, the Nebraska Companies have provided compelling arguments and persuasive data demonstrating why the Commission should not differentiate the treatment of VoIP-PSTN traffic from traditional voice traffic during the transition to long-term ICC reform. The establishment of either a VoIP-specific rate, a bill-and-keep regime, or an exclusive Section 251(b)(5) framework would create arbitrage opportunities by allowing carriers to declare all traffic as IP-originated for the sole purpose of avoiding payment for terminating access. Similarly, as the Nebraska Companies explain below in the comments on the AT&T alternative approach, arbitrage opportunities will

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<sup>43</sup> *Id.*, para. 15.

be created and perpetuated whenever there is rate difference between VoIP-PSTN traffic and traditional voice traffic. To avoid creating new arbitrage opportunities, the Commission must apply the existing ICC regime, during the transition period, for all voice traffic terminating on the PSTN.

**H. AT&T's Amended Approach As Stated in Its November 2008 Comments Applies the Same Intercarrier Compensation Rates to VoIP-PSTN Traffic That Are Applied to Traditional Voice Traffic.**

The Commission also seeks comment on other approaches that have been proposed for addressing the ICC obligations associated with VoIP traffic. For example, the Commission seeks comment on an approach provided to the Commission by AT&T on July 17, 2008.<sup>45</sup>

AT&T's approach as referenced by the Commission<sup>46</sup> is not unlike that which has been proposed by the Nebraska Companies in their comments in section IV.G *supra*, except the Nebraska Companies believe that LECs should continue to bill their intrastate access rates for intrastate interexchange traffic during the interim period, even when such rates exceed interstate access rates.

Although the *Notice* seeks comment on AT&T's proposal submitted on July 17, 2008, AT&T later modified its proposal in comments filed with the Commission on November 26, 2008.<sup>47</sup> AT&T's Comments appear consistent with the Nebraska Companies' position as

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<sup>44</sup> See *id.*, para. 17 and n. 53.

<sup>45</sup> *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption,"* WC Docket No. 08-152 (filed July 17, 2008) ("AT&T VoIP Petition") (see also, Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. 2 (filed July 17, 2008) (attaching Petition for inclusion in open dockets).

<sup>46</sup> *Notice*, fn. 938.

<sup>47</sup> See *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound*

described in comment section IV.G. The Nebraska Companies, therefore, urge the Commission to adopt the same ICC obligations for VoIP-PSTN and traditional voice traffic.

**V. To Prevent Future Occurrences Of Phantom Traffic, The Commission's Amended Call Signaling Rules Should Include The Additional Requirements Proposed By The Nebraska Companies.**

In the *Notice*, the Commission seeks comment on whether the proposed rules would achieve the goal of helping ensure complete and accurate passing of call signaling information for billing purposes. The Commission proposes to revise its current delivery requirements for all telecommunications providers and entities furnishing interconnected VoIP that originate interstate and intrastate traffic on the PSTN or originate traffic destined for the PSTN. These obligations include transmitting the telephone number received from, assigned to or otherwise associated with the calling party to the next provider along the call path from the originating provider to the terminating provider, where technically feasible. The Nebraska Companies provide comment regarding the phantom traffic portions of the *Notice* that seek to clarify the obligations currently imposed on service providers using Signaling System 7 ("SS7").

Although the proposed rules for improving call signaling requirements are a step forward in the process of addressing some existing issues with traffic delivery, the Nebraska Companies believe additional steps are necessary to resolve the phantom traffic issue. If only the calling party number ("CPN"), charge number ("CN"), multi frequency ("MF") automatic numbering information ("ANI"), or session initiation protocol ("SIP") (depending on the technology utilized) are passed with the originating calling record, the terminating provider still may not be able to determine the IXC responsible for the call or the identity of the originating company serving the end user customer. These fields, proposed by the Commission, are also not adequate

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*Traffic*, CC Docket No. 99-68, *IP-Enabled Service*, WC Docket No. 04-36, Comments of AT&T Inc., Nov. 26, 2008.

in an environment where the call is carried by an IXC, local number portability (“LNP”) is used, or where the originating caller is mobile or “nomadic” such as wireless or VoIP (both growing methods of communication).

**A. The Commission’s Amended Call Signaling Rules Should Require That The CIC is Populated in The CIP And/Or In The TNS Field(s) Of The SS7 Message and Should Require OCN to be Populated in the Exchange Message Interface (“EMI”) Record for Non-IXC Carried Calls.**

A landline carrier must know the appropriate carrier to bill when terminating traffic. The traffic is often received on common trunks from a tandem provider and the landline carrier relies on billing records received from the tandem provider to determine the appropriate party to bill. Since the call may have originated from a “fixed” or “nomadic” service and even a ported number, the terminating carrier must receive more than the CPN or CN to accurately determine the carrier that is financially responsible for the call.

The billing records from the tandem provider must include either a Carrier Identification Code (“CIC”) or Operating Company Number (“OCN”) to identify the carrier that should be billed for the traffic. The CIC is a four digit code which is unique to each IXC and identifies the IXC that carried the call and responsible for paying access charges to the terminating landline carrier. If the call was not carried by an IXC, such as a Regional Bell Operating Company, wireless carrier, or in some cases a Competitive Local Exchange Carrier (“CLEC”), the OCN on the billing record should be populated rather than the CIC.

**1. Proposed SS7 CIC Requirements.**

In order to ensure that the terminating carrier can determine the proper carrier for billing purposes, the Commission should require that the CIC is populated in the Carrier Identification Parameter (“CIP”) and/or in Transit Network Selection (“TNS”) field(s) of the SS7 message. If the call is handed to a different IXC during the call for terminating purposes, then that IXC’s CIC should be applied to the calling record.

## **2. Proposed Billing Record OCN Requirements.**

Along with other proposed changes, another method or action to assist with eliminating phantom traffic is that the Commission should mandate an OCN be applied to the EMI billing records when an IXC does not carry the call. If an IXC does not carry the call then the originating company should be billed for the call, as this type of call is billed by the terminating carrier identified by the OCN populated in the EMI record. OCN is not an SS7 field and therefore is not signaled. The OCN is populated during the message processing for the EMI record which needs to be present in a billing record if the call is not carried by an IXC.

- B. The Commission Should Mandate Accurate Population of the JIP Field; However In The Absence of Originating Call Billing Information, The Commissions Should Clarify That The “Telephone Numbers Rule” Is An Acceptable Method To Determine The Proper Call Jurisdiction.**

### **1. Wireless Jurisdiction Issues**

Depending on whether a wireless call originates and terminates within the same Metropolitan Trading Area (“MTA”) or originates and terminates in a different MTA, the CMRS traffic is billed as either local (subject to reciprocal compensation) or non-local (subject to switched access rates) per the Commission’s rules under 47 C.F.R. § 51.710(b)(2). The proposed rules do not require the wireless carrier serving the wireless caller to provide the originating cell site of the wireless caller. This lack of information causes a problem when trying to properly bill and designate proper jurisdictional authority of the call. Therefore, the proposed rules do not resolve the existing issues associated with the proper billing or identifying of wireless or “nomadic” originated traffic. Due to mobile nature of wireless callers, the originating CPN data does not provide location information; therefore the terminating LEC is unable to determine the applicable jurisdiction or ICC rate under the current Commission rules. The Nebraska Companies are concerned that this issue is not being addressed in the proposed rules.

The Commission acknowledges in the *First Report and Order* in CC Docket No. 96-98<sup>48</sup>

that

“CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination rate or access charge. We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer’s specific geographic location.”<sup>49</sup>

There have been attempts by the Commission to address some of the issues surrounding this problem in the past. The Commission concluded “that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.”<sup>50</sup> In the *First Report and Order*, the Commission stated that “the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer.”<sup>51</sup>

Over the years, based on the lack of information to properly bill the call, it has been difficult for LECs in various states to negotiate ICC and InterMTA factors with the CMRS providers. Protracted and costly negotiations may be required. Based on the improved technology capabilities over the years, one method to address this issue is to require carriers to populate the necessary accurate information so that the terminating carrier can properly bill or identify the call. The requirements suggested herein should be obtainable with technology advancements of today and should be able to reduce the confusion surrounding the billing of these calls and disputes arising from them.

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<sup>48</sup> First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, 11 FCC Rcd 15499 (1996), para. 1036 (“*First Report and Order*”).

<sup>49</sup> *Id.*, para. 1044.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

For SS7 signaling, the Alliance for Telecommunications Industry Solutions (“ATIS”) has recommended<sup>52</sup> that the Jurisdictional Indicator Parameter (“JIP”) be populated with the NPA-NXX of the originating switch; however, because it is a recommendation, carriers are not required to populate this six digit SS7 field. The Network Interconnection Interoperability Forum (“NIIF”) recommended seven rules for populating JIP in order to obtain consistency in the telecommunications industry. However, even if accurately populated using these recommended rules, the JIP does not provide enough information for terminating providers to accurately bill wireless originated traffic. In order to properly bill wireless originated traffic the SS7 message would also need to contain the originating cell site along with the originating MTA and state of the cell site identified in the signaling message. One method to address this issue is that all wireless carriers be required to populate the JIP with the two-digit state identifier and the two-digit MTA code associated with the originating cell site along with the 6-digit NPA-NXX of the originating switch as recommended by ATIS.

## **2. Ported Number Jurisdiction Issues**

Another issue presented when addressing jurisdictional requirements is the increased usage of ported numbers between carriers and technology. Porting of telephone numbers has been increasing over the years, and the signaling rules have not been updated to adequately address LNP. With only the CPN as proposed by the Commission, the terminating LEC would not be able to determine the financially responsible party with certainty. The CPN may have been ported from the LEC to a CLEC or to a wireless carrier. Since the LEC cannot always determine the financially responsible party from the CPN, an accurate JIP needs to be signaled and carried through the entire call path.

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<sup>52</sup> ATIS-PP-1000113.2005, Signaling System No. 7 (SS7) – Integrated Services Digital Network (ISDN) User Part (Revision of T1.113-2000).



The JIP is a SS7 field in the switch record which typically becomes the originating Local Routing Number (“LRN”) field in an EMI record for billing purposes. Requiring this field to be populated with the NPA-NXX of the originating switch, by the originating carrier, and to be accurately passed without alteration along the entire call path will help properly identify the calls jurisdiction, reduce phantom traffic, and help ensure proper call allocation.

### **3. Proposed Jurisdiction Requirements**

Given the growth in wireless originated calls, the JIP is increasingly important and given the switching, routing and signaling technology today, carriers should be able to populate the JIP as proposed. Even if the Commission were to grant a transition period for carriers to understand and implement these new requirements, the Commission should clarify that the “telephone numbers rule”<sup>53</sup> is an acceptable method to use in the absence of the originating cell site information. The telephone numbers rule would provide Commission support of providers being able to utilize the originating telephone numbers or CPN associated with a call path as the default proxy when the actual origination site is not able to be provided or if there is no agreed upon billing factor or JIP/LRN to use.

#### **C. The Commission Should Refine The “Network Feasibility” Language In The Amended Rules To Ensure Adherence By Carriers.**

The Commission also allows for the proposed rule to apply “where such transmission is feasible with network technology deployed at the time a call is originated.”<sup>54</sup> This leaves room for many providers to use the excuse of “transmission was not technically feasible”; therefore, the Commission should tighten this portion of the proposed rule so it is clear that there will be few to no circumstances that the proposed rules will not be followed. Mandating these fields to

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<sup>53</sup> See *National Exchange Carrier Association Petition for Interim Order, In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, January 22, 2008.

<sup>54</sup> Notice, Appendix B. 2(a)(1).



be populated and passed through the call path and billing records will ensure all carriers have a standardized method for proper billing for traffic routed over the PSTN.

If the fields used for billing purposes are missing from the final billing record, the financially responsible party should be the last IXC to transport the call to the terminating provider. If the terminating IXC cannot be identified, then the originating IXC (customer picked long distance provider) should be the financially responsible party for the termination of that call.

**D. In Addition To The Commission's Proposed Rule Amendments, The Nebraska Companies Urge The Commission To Adopt Additional Rule Requirements Proposed Herein To Avoid Phantom Traffic.**

The Nebraska Companies are in support of the Commission and its effort to move forward with clarifying existing rules governing signaling information. This clarification will assist with resolving current billing issues that terminating providers encounter. However, based on the above discussion, the Nebraska Companies urge the Commission to take action to adopt further rules to assist with resolution of the phantom traffic issue rather than to take only an incremental step toward the end goal. These additional requirements to the proposed rule will help ensure the growing number of wireless originating calls and other "nomadic" calls are billed and properly accounted for in the future. Inclusion of the additional requirements stated above will help ensure the phantom traffic issue is being properly addressed. With the increasing amounts of CMRS and VoIP traffic, the rules need to be further defined in order to enable terminating providers to accurately bill for traffic terminated to their networks. These rules would include the identification of the financially responsible party as well as the proper jurisdiction, for terminating traffic. Resolution of the phantom traffic issue has been a long-standing need, and the Commission needs to establish rules to rectify the problem.

The Nebraska Companies respectfully request the Commission to approve the proposed signaling information rule along with adding additional measures and clarifications to the rule in order to address the Phantom Traffic issue and assist with appropriate ICC rates. Along with the rule applying to VoIP carriers, all jurisdictions, all traffic destined for the PSTN, and mandating the CPN, CP, and ANI be passed, there are additional measures that the Commission should include in the rule. The Commission should mandate that the SS7 CIP and/or TNS field(s) with the accurate CIC of the IXC and require accurate population of the JIP field. If the IXC is changed during the terminating call path, then the rules should state that the actual terminating IXC's CIC should be applied to the record at the time of handoff; however the terminating provider shall bill the CIC that is populated and transmitted with the call record regardless of proper or improper CIC identification by the IXC's handling the call.

For carriers that rely on EMI files for billing, the Commission should also mandate that EMI files include the populated JIP in the originating LRN field for proper billing, and the files should also include enough information for the billing of IXC and non-IXC calls such as the OCN, and/or the CIC. This mandate would require that if the JIP is received within the call record it will be passed along in the billing record to the terminating provider. Calls not carried by an IXC would not have a populated CIC; therefore the Commission should mandate that the OCN populated by the message processing must be provided in the EMI file for non-IXC carried calls.

For CMRS-originated calls the population of the JIP field should additionally include the 2-digit state code, 2-digit MTA code of the originating tower, as well as the originated switch information for that call. In the absence of actual geographic location for the origination of the call, or in transition to the recommended requirements above, the Commission should clarify that the "telephone numbers rule" (based on CPN) will apply by default if the non-existent actual

geographic location is populated or if an agreement in order to jurisdictionalize the traffic for billing purposes is not in place.

In order to assist with phantom traffic and proper compensation for terminating calls on LECs' facilities, the Commission should include a requirement in the new rules that the last IXC transporting the traffic to the final terminating provider is the financially responsible party for a call. If such mandated information is missing from the record the originating IXC at the start of the call would be the financial responsible party for the termination of that call. Although these rules would not resolve all traffic issues, the foregoing proposal by the Nebraska Companies would greatly reduce phantom traffic, and billing disputes on a going forward basis. In order to properly bill for traffic on the terminating provider's networks, these recommended fields, at a minimum, need to be accurately populated in accordance with Commission rules and passed between carriers.

## **VI. Conclusion.**

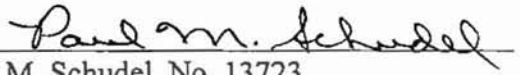
The Nebraska Companies respectfully request the Commission to carefully consider, adopt and incorporate, as appropriate, the positions set forth in the foregoing Comments into its consideration as to whether interconnected VoIP is subject to ICC rules and the applicable rate for such traffic; and revisions to the Commission's call signaling rules to reduce phantom traffic.

Dated: April 1, 2011

Respectfully submitted,

Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom, Inc., and Three River Telco

**The Nebraska Rural Independent Companies**

By:   
Paul M. Schudel, No. 13723  
[pschudel@woodsaitken.com](mailto:pschudel@woodsaitken.com)  
James A. Overcash, No. 18627  
[jovercash@woodsaitken.com](mailto:jovercash@woodsaitken.com)  
WOODS & AITKEN LLP  
301 South 13th Street, Suite 500  
Lincoln, Nebraska 68508  
(402) 437-8500  
Facsimile: (402) 437-8558  
Their Attorneys